

1 SOMACH SIMMONS & DUNN
2 MICHAEL W. DAUGHERTY, ESQ. (Co. Bar No. 49074)
3 Pro Hac Vice
4 RAMSEY L. KROPF, ESQ. (Co. Bar No. 21528)
5 Pro Hac Vice
6 1155 Canyon Blvd., Suite 110
7 Boulder, CO 80302
8 Telephone (916) 446-7979
9 Facsimile: (916) 446-8199
10 mdaugherty@somachlaw.com
11 rkropf@somachlaw.com

7 LAW OFFICE OF FRANK LAWRENCE
8 FRANK LAWRENCE, ESQ. (Ca. Bar No.147531)
9 ZEHAVA ZEVIT, ESQ. (Ca. Bar No. 230600)
10 111 Bank St. No. 175
11 Grass Valley, CA 95945
12 Telephone: (530) 362-8434
13 frank@franklawrence.com
14 zehava@franklawrence.com

12 Attorneys for Defendant-Intervenor
13 YUHA AVIATAM OF SAN MANUEL NATION,
14 a federally recognized Indian tribe, also federally
15 recognized as SAN MANUEL BAND OF MISSION INDIANS

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION – RIVERSIDE**

20 SAVE OUR FOREST ASSOCIATION,
21 INC.,

22 Plaintiff,

23 v.

24 UNITED STATES FOREST SERVICE,

25 RANDY MOORE, in his official
26 capacity as Chief of the U.S. Forest
27 Service,

Case No.: 5:24-cv-01336-JCB-DTB

**YUHA AVIATAM OF SAN
MANUEL NATION's
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS**

Hearing Date: November 24, 2025
Hearing Time: 9:00 A.M.
Courtroom: 1
Judge: Hon. Jesus G. Bernal

Action Filed: June 25, 2024

1 CHRISTOPHER FRENCH, in his
2 official capacity as Deputy Chief for the
3 National Forest System of the
U.S. Forest Service,

4 JENNIFER EBERLEIN, in her official
5 capacity as Regional Forester for the
6 Pacific Southwest Region of the
U.S. Forest Service,

7 DANELLE HARRISON, in her official
8 capacity as Forest Supervisor of the San
Bernardino National Forest of the
U.S. Forest Service,

9 MICHAEL NOBLES, in his official
10 capacity as Front Country District
Ranger of the U.S. Forest Service,

11 Defendants.

12 YUHA AVIATAM OF SAN MANUEL
13 NATION, a federally recognized Indian
tribe, also federally recognized as SAN
14 MANUEL BAND OF MISSION
INDIANS,

15 Defendant-Intervenor.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Yuhaaviatam of San Manuel Nation (“Nation”) moves to dismiss this case with prejudice for failure and inability to join the Nation as a required party. *See* FRCP 12(b)(7) and 19. The Nation has substantial sovereign, historical, contractual, and other rights at issue here, but it cannot be joined because of its sovereign immunity. This case may not proceed in equity and good conscience without the Nation, and therefore, this Court should dismiss.

The Nation is a federally recognized Indian tribe that exercises sovereignty over its lands and citizens. *See* 89 Fed. Reg. 99899, 99902 (Dec. 11, 2024). Since time immemorial, the Nation has occupied and stewarded the lands that now comprise the San Bernardino National Forest, including the Strawberry Canyon watershed.

Plaintiff Save Our Forest Association, Inc. (“SOFA”) seeks injunctive and declaratory relief against the United States Forest Service (“USFS”) that would significantly and adversely impact the Nation’s sovereignty, improperly render useless its water rights, cut off the Nation’s water delivery, undermine its fundamental interests, and endanger its people and surrounding communities. Specifically, SOFA seeks to enjoin a special use permit (“SUP”) that allows water delivery to the Nation on the over 2,000-acre property known as Arrowhead Springs (“Property” or “Arrowhead Springs”) that has relied upon such water for over 100 years and to which the Nation has legal rights. Arrowhead Springs’ water serves the Nation’s governmental, cultural, recreational and community facilities located on the Property that are used daily by the Nation and its citizens, employees, and guests. It also supplies the Nation’s fire station and system of fire hydrants on the Property, which local, regional, state and federal agencies use to combat fires at and around Arrowhead Springs. The Property also serves as a training facility for these first responders.

1 SOFA also seeks to force the removal of a pipeline and associated
2 infrastructure that deliver the Nation's much-needed water to the Property. Such
3 removal would force the Nation to incur losses and costs totaling millions of
4 dollars.

5 SOFA's action threatens several of the Nation's fundamental interests
6 including sovereign, historic, cultural, property, and contractual rights. If
7 successful, this action would undermine the Nation's ability to conduct
8 governmental operations, harm its property and facilities, hinder its cultural
9 activities and economic development efforts, vitiate its legal rights, and deprive the
10 Nation (and non-tribal firefighting agencies) of the ability to combat wildfire that
11 threatens the Property and neighboring lands.

12 Despite the significant dangers this lawsuit poses to the Nation, the Nation
13 cannot be joined because it is immune from suit absent a clear waiver or
14 congressional abrogation of its sovereign immunity, neither of which have occurred
15 here. Accordingly, given the breadth and scope of its interests at stake in this
16 matter, the action cannot in equity and good conscience proceed in the Nation's
17 absence.

18 The Nation appears for the limited purpose of moving to dismiss under Rules
19 12(b)(7) and 19. It expressly reserves its sovereign immunity and does not consent
20 to be sued, nor does it subject itself to the Court's authority for any purposes other
21 than adjudication of this motion and the accompanying motion for limited
22 intervention.¹

23
24 ¹ "[T]ribes may intervene for the limited purpose of asserting they are required
25 parties without waiving their sovereign immunity." *Maverick Gaming LLC v.*
26 *United States*, 658 F. Supp. 3d 966, 974 (W.D. Wash. 2023), *aff'd*, 123 F.4th 960
27 (9th Cir. 2024); *Cert. denied RunItOneTime LLC (fka Maverick Gaming LLC, v.*
28 *U.S. et. al.*, 24-1161 (Oct. 6, 2025) ("*Maverick Gaming*"). "[W]here, as here, a tribe
intervenes for the limited purpose of a motion to dismiss the action because it is a
required party that cannot be joined due to its sovereign immunity, the court's

II. STATEMENT OF FACTS

A. The Nation Has Ancestral Ties, Legal Rights, and Sovereign Interests at Arrowhead Springs.

The Property holds significant historical, spiritual, and cultural value to the Nation. Since time immemorial, the Nation, its people, and their ancestors have used, lived among, and shared an intimate connection to this land. The ancient village known as Apuiv’at was located in the area of what is today known as Arrowhead Springs. The Arrowhead landmark, natural hot mineral springs, and surrounding areas are sacred sites, as defined in Executive Order 13007. *See* Declaration of A. McCleary ¶¶2-3, 5-8, 10, filed in the related case *BlueTriton Brands v. United States Forest Service*, Case No. 2:24-cv-09720 (“*BlueTriton*”) and attached as Exhibit 1 to the Nation’s Request for Judicial Notice (“RJN”) submitted herewith.²

In addition to the Nation’s water use at Arrowhead Springs prior to colonization, the Property’s owners have diverted water on and around Arrowhead Springs for the Property’s beneficial uses since at least 1864, when the Property first housed a hotel and resort. *See* State Water Resources Control Board Order WR 2023-0042 (April 23, 2021) at RJN Ex. 2 pp.22-23 (“Water Board Order”). The Nation purchased the Property in 2016. *See* McCleary Dec. ¶7 (RJN Ex. 1); Hickey Dec. ¶3 (RJN Ex. 3).

jurisdiction is ‘limited to the issues necessary to decide’ that controversy, only.” *Id.*, 123 F.4th at 979 (quotation omitted). *See Klamath Irrig. Dist. v. U.S.*, 48 F.4th 934, 942 (9th Cir. 2022); *Diné Citizens v. BIA*, 932 F.3d 843, 850 (9th Cir. 2019).

² Citations to documents in the related case *BlueTriton* and included as exhibits to the Nation’s RJN here, are cited as: “__ Dec. ¶__ (RJN Ex. __)” or “__ Dec. [or document name] Ex. __ at RJN Ex. __ pp.__-__”. Page numbers refer to the RJN’s sequentially number pages in the lower right corner.

1 Between 1929 and 1930, the previous Property owners contracted with
2 BlueTriton's predecessor, the last of which contracts, dated September 26, 1931
3 ("1931 Contract"), provided that BlueTriton's predecessor has the right to develop
4 water in "Strawberry Canyon" and is obliged to deliver 20 percent of that water to
5 Arrowhead Springs. *See* 1931 Contract ¶2, R. Garton Dec. Ex. 6 at RJN Ex. 4
6 p.184. To transport the water, BlueTriton and its predecessors constructed,
7 accessed and operated the infrastructure in Strawberry Canyon, primarily located on
8 San Bernardino National Forest lands. While water use at Arrowhead Springs
9 clearly began in the 1880s, "since 1930" BlueTriton and its predecessors sought and
10 received special use permits issued by the Forest Service to operate infrastructure
11 on federal lands for water delivery. Water Board Order at RJN Ex. 2 p.35. This
12 infrastructure is used to this day to deliver water to the Nation. *Id.* pp.34-35.

13 Following the 1931 Contract, downstream users sued the Nation's
14 predecessor and BlueTriton's predecessor, alleging that upstream diversions and
15 uses injured their water rights. On October 19, 1931, the San Bernardino County
16 Superior Court rejected the challenge, entering a stipulated judgment confirming
17 BlueTriton's predecessor's rights to divert water, and the Tribe's predecessor's
18 right to use water, from Strawberry Canyon at Arrowhead Springs. *See* Water
19 Board Order at RJN Ex. 2 pp.26-27; D. Little Dec. ¶19 and Ex. 5 at RJN Ex. 5
20 pp.280-281) (*Del Rosa Mutual Water Company v. Carpenter*, No. 31798, Judgment
21 at 7-8 (S.B. Sup. Ct. 1931)) (describing the Property's previous owner's water uses
22 since circa 1880 and decreeing its right to divert and use water).

23 When the Nation purchased Arrowhead Springs in 2016, it acquired all
24 related real property, water and other rights from the previous Property owners,
25 including the right to receive water under the 1931 Contract. *See* McCleary Dec. ¶7
26 (RJN Ex. 1); Hickey Dec. ¶3 (RJN Ex. 3).

27 On December 11, 2023, the Nation and BlueTriton entered a Letter
28 Agreement ("Letter Agreement") that amended and clarified BlueTriton's water

1 delivery obligations under the 1931 Contract. *See* R. Garton Dec. Ex. 4 at RJN Ex.
2 4 p.189-193. The Letter Agreement requires BlueTriton to cooperate with the
3 Nation's efforts to obtain water from Strawberry Canyon, including to support any
4 application the Nation might file for its own SUP from the USFS, and to negotiate
5 an agreement so the Nation can use the infrastructure pursuant to that potential
6 SUP. *See id.*

7 The Nation continues to use water supplied under BlueTriton's prior SUPs
8 and pursuant to the State Water Board's stayed order³ for governmental uses,
9 including:

- 10 ■ Government administrative offices located at Arrowhead Springs;⁴
- 11 ■ Tribal cultural purposes, including cultural facilities and grounds;⁵
- 12 ■ Event spaces used both for the Nation's meetings and special events and, as
13 a governmental economic development project, for meetings and events
14 hosted by third parties;⁶
- 15 ■ Native plant propagation;⁷

16 ³ The State Water Board's Order at RJN Ex. 2 p.79 carves out authority for
17 BlueTriton to divert and deliver water through its facilities in the Strawberry Creek
18 watershed from Tunnels 2 & 3, and Boreholes 1, 1A, 7, 7A, 7B, 7C, and 8.

19 ⁴ *See* D. Little Dec. ¶12 (RJN Ex. 5); "Summary of Information on the Critical
20 Need for Continued Delivery of Water to the Yuhaaviatam of San Manuel Nation's
21 Arrowhead Property" dated November 15, 2024, attached to D. Little Dec. as . Ex.
22 5 and found at RJN Ex. 5 pp.255-56 (hereinafter, "Summary"). This "Summary" is
the Nation's expert's report on the Nation's need for the water at issue here. *See*
Hickey Dec. ¶8, RJN Ex. 3 ("the Nation hired consultants and outside water law
counsel and produced a 49-page letter and attachments dated November 15, 2024,
that provided all the information the USFS requested).

23 ⁵ *See* R. Garton Dec. ¶6 (RJN Ex. 4); A. McCleary Dec. ¶10 (RJN Ex. 1); Summary
24 (D. Little Dec. Ex 5) at RJN Ex. 5 pp.255-56.

25 ⁶ "In 2024, over 60 events occurred in the event spaces. This does not include the
26 daily use by the Nation and its employees and the training events, where fire
27 fighters and other first responders from more than 20 city, state, federal and other
28 agencies receive training." Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 p.256.

⁷ "The Nation's Cultural Resource Management and Environmental Departments

- 1 ▪ A tribal fire station and fire hydrants that serve both Nation and non-Nation
- 2 lands;⁸
- 3 ▪ Domestic irrigation of fire-defensible green space surrounding important
- 4 facilities;⁹
- 5 ▪ Fire suppression training, including tribal, local, State, and federal
- 6 firefighting agencies' training and firefighting;¹⁰ and
- 7 ▪ Recreational purposes.¹¹

8 The Nation has broad riparian, appropriative, contractual, groundwater and
9 aboriginal water rights in Arrowhead Springs and the surrounding area, including
10 Strawberry Canyon. The Nation has "State riparian water rights, as Strawberry
11 Creek and East Twin Creek flow across the Arrowhead property owned by the
12 Nation." Summary (D. Little Dec. Ex. 5) at RJN Ex. 5 p.266. The Nation's

13
14 _____
15 manage this work, and the Nation employs a full-time ethno-botanist and other
16 experts to assist." Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 p.270; R. Garton
17 Dec. ¶6 (RJN Ex. 4).

18 ⁸ See Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 p.256; R. Garton Dec. ¶6 (RJN
19 Ex. 4).

20 ⁹ See R. Garton Dec. ¶7 (RJN Ex.4). After reacquiring the property, the Nation
21 instituted water conservation measures, reducing irrigation uses by approximately
22 40% over prior owners' use. *See id.*

23 ¹⁰ "[F]ire fighters and other first responders from more than 20 city, state, federal
24 and other agencies have attended training events in the property's other facilities in
25 2024, including, but not limited to, Cal-Fire, San Bernardino County, City of San
26 Bernardino, City of Ontario, City of Rancho Cucamonga, City of Chino, Fontana
27 Police Department, City of Barstow, City of Big Bear, City of Apple Valley, City
28 of Rialto, City of Colton, City of Redlands, City of Loma Linda, San Bernardino
County Sheriffs, Riverside County Sheriffs, LA County Sheriffs, California State
Park Rangers, US Marshalls...." Summary (D. Little Dec. Ex. 5), at RJN Ex. 5
p.270. Arrowhead Springs also has the only "dipping pond" available for
firefighting between Hwy. 18 and Hwy. 330. *See* R. Garton Dec. ¶10 (RJN Ex. 4).

¹¹ *See* R. Garton Dec. ¶6 (RJN Ex. 4).

1 riparian rights “were acknowledged by the State Water Resources Control Board
2” *Id.* (citing pp.79, 89-90 of the Water Board Order¹²).

3 In addition to those water rights, the Nation also has historic “State pre-1914
4 appropriative water rights,” based on the “Arrowhead property’s diversions of
5 water from Strawberry Canyon for use at the hotel and other facilities on such land
6 prior to 1914, which were recorded with the County of San Bernardino.” Summary
7 (D. Little Dec. Ex. 5), at RJN Ex. 5 p.267. “[T]he Nation [also has historic]
8 appropriative rights in East Twin Creek, which the Nation may divert further
9 upstream, including from Strawberry Canyon, pursuant to state law, including
10 California Water Code Section 1706” *Id.* “This right predates all other state
11 water rights, and the USFS lacks authority to modify the priority and administration
12 of a recognized state water right. The Nation also possesses other pre-1914 rights in
13 East Twin Creek and its tributaries by virtue of being the sole shareholder of the
14 Del Rosa Mutual Water Company.” *Id.*

15 In addition to those riparian and historic appropriative water rights, the
16 Nation has a contractual right to water under the 1931 Contract as a successor in
17 interest to receive water from BlueTriton. *See* Water Board Order at RJN Ex. 2
18 p.30; Letter Agreement (R. Garton Dec. Ex. 7) at RJN Ex. 4 pp.189-192 (“Letter
19 Agreement”).

20 Finally, as the Nation explained to the USFS in November 2024, it also
21 claims “aboriginal water rights, rooted in the fact that Strawberry Canyon lies in the
22 Nation’s aboriginal territory. In fact, as discussed above, the Nation’s ancestors
23 had a village on and around the Arrowhead property.” Summary (D. Little Dec.
24
25
26
27

28 ¹² The Order is RJN Ex. 2.

1 Ex. 5), at RJN Ex. 5 pp.266-67. *See Metlakatla Indian Cmty. v. Dunleavy*, 58 F.4th
2 1034, 1042 (9th Cir. 2023).¹³

3
4 **B. The Instant Suit.**

5 The first amended complaint (“Complaint”) seeks to prevent Defendants
6 from continuing to allow BlueTriton’s occupancy and water diversion from
7 Strawberry Canyon to Arrowhead Springs. *See* Complaint, Prayer for Relief ¶¶4-5,
8 7. The Complaint directly attacks the USFS’s grant to BlueTriton of the permit that
9 allows water delivery to the Nation. *See id.* Moreover, Plaintiff seeks to not only
10 prevent BlueTriton from holding such a permit but also to prevent the Nation from
11 itself securing a permit allowing it to operate BlueTriton’s infrastructure. *See id.*
12 Prayer for Relief ¶5. The Complaint also challenges the Nation’s water rights
13 directly, asserting that the Nation “has not demonstrated water rights.” *See id.*,
14 ¶110. Finally, Plaintiff seeks to permanently cut off water delivery to the Nation by
15 forcing removal of the water-delivery pipeline and infrastructure, which will cost
16 millions of dollars and which is essential to delivering water to the Property. *See*
17 *id.* ¶¶69, 94, Prayer for Relief ¶7.

18 SOFA’s requested relief would indefinitely terminate the Nation’s primary
19 water supply for Arrowhead Springs and would remove the infrastructure necessary
20 to deliver such water to Arrowhead Springs before the Nation could assume its
21 operation. That outcome would prevent the Nation from exercising its water rights,
22 including its right to apply for its own permit to operate the infrastructure. Despite
23 the Nation’s indisputable sovereign interests and legal rights, including riparian,

24
25 ¹³ The Nation also possesses groundwater rights at Arrowhead Springs, however
26 those rights are not at issue here. The groundwater supply is insufficient to meet
27 the needs at Arrowhead Springs, in part due to low and unreliable production and
28 temperature, high levels of contaminants in the water, and a lack of infrastructure.
Several wells contain elevated levels of arsenic and fluoride and are not suitable for
potable uses or irrigation. Hamai Dec. ¶ 10 (RJN Ex. 8).

1 appropriate, groundwater, contractual, and aboriginal water rights, at issue here,
2 SOFA did not name the Nation as a defendant. The Nation now moves for
3 dismissal under Fed. Rules of Civ. Proc. 12(b)(7) and 19.

4 5 **III. ARGUMENT**

6 **A. Legal Standard for Dismissal Per Rule 12(b)(7) and Rule 19.**

7 “A party may move for dismissal of a complaint under Federal Rule of Civil
8 Procedure 12(b)(7) for ‘failure to join a party under Rule 19.’” *Maverick Gaming*,
9 123 F.4th at 971 (*quoting* FRCP 12(b)(7)). *See Klamath*, 48 F.4th at 943. Courts
10 analyze Rule 19 motions under a three-part inquiry. *See Maverick Gaming*, 123
11 F.4th at 972-973. First, the court determines whether the absent party is required
12 under Rule 19(a). *See id.* (*citing Klamath*, 48 F.4th at 943). Second, if the court
13 determines the absent party is required, it then determines whether joinder is
14 feasible. *See id.* Third, if joinder is infeasible, the court must “‘determine whether,
15 in equity and good conscience, the action should proceed among the existing parties
16 or should be dismissed.’” *Id.* (*quoting* FRCP 19(b)).

18 **B. The Nation is a Required Party under Rule 19(a).**

19 A party is required under Rule 19(a) if (a) the court cannot accord complete
20 relief among existing parties in the nonparty’s absence, or (b) the nonparty claims
21 an interest relating to the subject of the action and is so situated that disposing of
22 the action in their absence may “as a practical matter” impair or impede the
23 nonparty’s ability to protect their interest or “leave an existing party subject to a
24 substantial risk of incurring double, multiple, or otherwise inconsistent obligations
25 because of the interest.” FRCP 19 (a)(1). Although the Nation need satisfy only
26 one criterion under Rule 19(a) to be a required party, it satisfies both.
27
28

1 **1. The Court Cannot Accord Complete Relief Among Existing Parties**
2 **in the Nation’s Absence.**

3 A party is required under Rule 19(a) if complete relief cannot be accorded to
4 Plaintiff even if victorious. *See Dawavendewa v. Salt River Project Agric.*
5 *Improvement & Power Dist.*, 276 F.3d 1150, 1156 (9th Cir. 2002) (complete relief
6 cannot be accorded absent the Nation because only the defendant and plaintiff “and
7 not the Nation—would be bound by such an injunction”); *Pit River Home & Agric.*
8 *Coop. Ass’n v. United States*, 30 F.3d 1088, 1099 (9th Cir. 1994) (“judgment
9 against the government would not bind the [Tribal] Council, which could continue
10 to assert its” rights); *Confederated Tribes of Chehalis Indian Reservation v. Lujan*,
11 928 F.2d 1496, 1498 (9th Cir. 1991) (“judgment against the federal officials would
12 not be binding on the Quinault Nation ...”).

13 Here, SOFA seeks to enjoin the USFS from allowing BlueTriton or “any
14 third party” (such as the Nation) to divert water from Strawberry Canyon unless and
15 until the USFS has performed a new or supplemental environmental analysis. *See*
16 Complaint, Prayer for Relief ¶5. But as noted above, the Nation has broad water
17 rights that authorize receipt of water through BlueTriton’s infrastructure. *See*
18 Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 pp.266-267. It has a contractual right
19 to receive water directly from BlueTriton. The Nation also has an agreement
20 requiring BlueTriton to support the Nation’s own SUP from the USFS, and to enter
21 an agreement allowing the Nation to use BlueTriton water infrastructure pursuant to
22 that SUP. *See* Water Board Order at RJN Ex. 2 p.26; Letter Agreement (R. Garton
23 Dec., Ex. 7) at RJN Ex. 4 pp.189-192. Accordingly, even if Plaintiff wins here, the
24 Nation can still assert its rights to divert water through the facilities in Strawberry
25 Canyon, and Plaintiff would not be accorded complete relief. The Nation is a
26 required party under Rule 19(a) because complete relief cannot be accorded in its
27 absence.

1 **2. The Nation Has an Interest in the Subject of the Action and the**
2 **Nation’s Absence Will Impair or Impede Its Ability to Protect Its**
3 **Interest.**

4 The Nation is also a required party under Rule 19(a) because its absence will
5 impair and impede its ability to protect its interests. Under Rule 19(a), “the interest
6 of the absent party must be a legally protected interest” *Jamul Action Comm. v.*
7 *Simermeyer*, 974 F.3d 984, 996 (9th Cir. 2020).

8 The Ninth Circuit has held that a “public entity has an interest in a lawsuit
9 that could result in the invalidation or modification of one of its ordinances, rules,
10 regulations, or practices.” *E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1082
11 (9th Cir. 2010). The Ninth Circuit includes Indian Tribes among “public entities”
12 for purposes of this Rule 19 analysis. *Id.* In addition, the Ninth Circuit has held
13 that “a party to a contract is necessary, and if not susceptible to joinder,
14 indispensable to litigation seeking to decimate that contract.” *Dawavendewa*, 276
15 F.3d at 1157 (9th Cir. 2002).

16 Here, the Nation has several legally protected interests at stake that render it
17 a “required” party. First, as noted above, the Nation’s ability to exercise its water
18 rights is at stake, including riparian, pre-1914 appropriative, contractual, and
19 aboriginal water rights. *See* Summary (D. Little Dec. Ex. 5) at RJN Ex. 5 pp.266-
20 267. The Complaint threatens these rights explicitly: “[The Nation] has not
21 demonstrated water rights.” ECF 24 (“Complaint”) ¶110. It also threatens them
22 implicitly because the relief sought would, *de facto*, eviscerate those rights by
23 removing the infrastructure and voiding the permit necessary to exercise them.
24 This lawsuit would alter the conditions that allow the Nation to receive its water,
25 thereby impairing the Nation’s water rights that the State Water Board
26 acknowledged.

27 Second, the Nation’s contractual right to receive water from BlueTriton is at
28 stake here. *See* 1931 Contract (R. Garton Dec. Ex. 6) at RJN Ex. 4 p.183; Water

1 Board Order at RJN Ex. 2 p.26; Letter Agreement (R. Garton Dec., Ex. 7) at RJN
2 Ex. 4 pp.189-192. The link between this lawsuit and the Nation's contractual rights
3 is direct: if the lawsuit succeeds, it will remove BlueTriton's water delivery
4 infrastructure, revoke the USFS permit authorizing the Nation's water delivery, and
5 nullify the Nation's contractual right to water. *See* Complaint, Prayer for Relief
6 ¶¶1-7.

7 Third, the Nation's tribal governmental operations, policies, and practices
8 will be negatively impacted. The Tribal governmental offices located at Arrowhead
9 Springs will shut down if the action succeeds, Tribal governmental employees will
10 not be able to work there, and thus the work of Tribal government will be directly
11 impacted in the most immediate sense. *See* D. Little Dec. ¶12(c) (RJN Ex. 5). The
12 Nation's provision of fire protection services through the fire station and fire
13 hydrants located at Arrowhead Springs will be cut off. *See* R. Garton Dec. ¶ 10
14 (RJN Ex. 4); D. Little Dec. ¶12(a), (c) (RJN Ex. 5); *see also Elliott v. White*
15 *Mountain Apache Tribal Ct.*, 566 F.3d 842, 850 (9th Cir. 2009) (noting "the tribe's
16 strong interest in . . . prevention of forest fires, and preservation of its natural
17 resources"). The Nation will no longer be able to facilitate firefighter training for
18 federal, State, Tribal and local firefighters on its property. *See* R. Garton Dec. ¶10
19 (RJN Ex. 4); K. Alexander Dec. ¶4 (RJN Ex. 6); D. Little Dec. ¶12(e) (RJN Ex. 5).
20 The Nation will no longer be able to irrigate fire-defensible green spaces
21 surrounding important facilities. *See* R. Garton Dec. ¶6 (RJN Ex. 4); D. Little Dec.
22 ¶12(d) (RJN Ex. 5). The Nation also will be unable to use its Property for Tribal
23 cultural purposes, recreation, meetings, or events, nor will it be able to rent out
24 facilities to third parties. *See* D. Little Dec. ¶12(a)-(c) (RJN Ex. 5). Consequently,
25 the Nation will lose not only a meeting place that serves important Tribal cultural
26 and governmental purposes, but also a source of revenue that funds Tribal
27 operations and contributes to the Nation's economic development. The Nation's
28 native plant propagation program will wither due to a lack of water, and the cultural

1 benefits that result from that program will be lost. *See* R. Garton Dec. ¶6 (RJN Ex.
2 4). In short, many important Tribal governmental practices and policies will be
3 impaired if this action succeeds. Under *E.E.O.C. v. Peabody W. Coal Co*, that
4 negative impact alone renders the Nation a required party.

5 Fourth, this action stands to directly affect the Nation’s citizens’ and other
6 people’s lives and property. “The Arrowhead [Springs] property maintains a
7 strategically located fire station and a system of fire hydrants... The Nation
8 provides water through its fire hydrants to local, state, and federal firefighters.
9 Every firefighting agency in the region connects to the hydrants to fight fires in the
10 area.” Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 p.271. The risk of fire at
11 Arrowhead Springs is real, and indeed, the current conditions at and around the
12 Property are particularly susceptible to wildfire. *See* K. Alexander Dec. ¶5 (RJN
13 Ex.6). Curtailing or ceasing water deliveries to Arrowhead Springs will interfere
14 with local and regional firefighting efforts, putting people’s lives and property at
15 peril. *See* K. Alexander Dec. ¶¶3,4 (RJN Ex. 6); R. Garton Dec. ¶¶6, 8, 9, 10 (RJN
16 Ex. 4).

17 In addition to all the above, the action threatens the Nation’s sovereignty. A
18 tribe’s sovereign claim of an interest in existing rights is precisely the type of
19 interest that Rule 19 is intended to protect. *See, e.g., Diné Citizens Against Ruining*
20 *Our Env’t v. Bureau of Indian Affairs*, 932 F.3d 843, 852 (9th Cir. 2019) (holding
21 that a tribe had a legally-protected interest in procedural claims where the effect of
22 a plaintiff’s successful suit would be to impair an existing right that benefited the
23 tribe); *Kescoli v. Babbitt*, 101 F. 3d 1304, 1311 (9th Cir. 1996) (finding that “the
24 Navajo Nation and the Hopi Tribe, by virtue of their sovereign capacity, have an
25 interest in determining what is in their best interests...” and holding that the tribes
26 were “necessary” parties under Rule 19).

27 Here, the Nation’s sovereignty is directly implicated by SOFA’s Complaint
28 in numerous ways. An outcome favoring SOFA and halting water supplies for

1 Arrowhead Springs would threaten the Property itself, thereby threatening the
2 Nation's sovereign right to control and protect numerous important tribal resources
3 including the Property, the facilities it houses, and the activities conducted on it, all
4 of which rely on water. *See* K. Alexander Dec. ¶¶3, 4 (RJN Ex. 6); R. Garton Dec.
5 ¶10 (RJN Ex. 4). Such an outcome would also threaten the Nation's sovereign right
6 to protect its cultural values like those implicated in the native plant propagation
7 program currently operating at Arrowhead Springs, and the cultural activities that
8 occur at the event center. *See* Summary (D. Little Dec. Ex. 5), at RJN Ex. 5 p.270.
9 It would also directly impact Tribal government operations by shutting down some
10 of the Nation's administrative government offices and one of its economic
11 development projects. *See* Nation's Letter to USFS dated Nov. 15, 2024, at RJN
12 Ex. 5 p.256. Here, as in *Diné Citizens*, "[t]he [Nation]'s interest is tied to" its self-
13 governance, economic development, and control over "its own natural resources."
14 *Diné Citizens*, 932 F.3d at 856. The Nation is a required party because several of
15 its fundamental interests are at stake here.

16
17 **3. The Existing Parties Do Not Adequately Represent the Nation's**
18 **Interests.**

19 As demonstrated below, none of the existing parties can or will adequately
20 represent the Nation's interests. "Three factors are relevant to whether an existing
21 party may adequately represent an absent party's interests: [1] whether the interests
22 of a present party to the suit are such that it will undoubtedly make all of the absent
23 party's arguments; [2] whether the party is capable of and willing to make such
24 arguments; and [3] whether the absent party would offer any necessary element to
25 the proceedings that the present parties would neglect." *Diné Citizens*, 932 F.3d at
26 852 (quotation omitted); *see also Klamath Irr. Dist.*, 48 F.4th at 943; *Alto v. Black*,
738 F.3d 1111, 1127-1128 (9th Cir. 2013).

27 In *Diné Citizens*, a coalition of conservation groups sued federal agencies for
28

1 permitting operation of a mine and power plant on Navajo land. The Ninth Circuit
2 considered whether the federal defendants could adequately represent the absent
3 Navajo Nation's interests under Rule 19. *Diné Citizens*, 932 F.3d at 852. The
4 Court concluded that because the federal defendants had an "interest in defending
5 their decisions, their overriding interest ... must be in complying with
6 environmental laws such as NEPA and ESA." It held that "[t]his interest differs in
7 a meaningful sense" from the Navajo Nation's "sovereign interest in ensuring the
8 Mine and Power Plant continues to operate and provide profits to the Navajo
9 Nation." *Id.* at 855.

10 The Ninth Circuit noted that if the district court were to hold that federal law
11 required more analysis that would delay mining and power generation activities, it
12 would impede the Tribe's activities on its land, and the federal defendants' interests
13 might diverge from the Tribe's interests. *Id.* It further noted that "while Federal
14 Defendants have an interest in defending their own analyses that formed the basis
15 of the approvals at issue, here they do not share an interest in the *outcome* of the
16 approvals..." *Id.* (emphasis in original). Thus, the Court held that the federal
17 defendants could not adequately represent the absent Tribe. *Id.* See also *White v.*
18 *Univ. of Cal.*, 765 F.3d 1010, 1027 (9th Cir. 2014) (defendant could not sufficiently
19 represent the tribes' interests because the University's and the tribes' interests were
20 of a different nature and accordingly would not necessarily remain aligned).

21 Here, too, the federal Defendants cannot adequately represent the Nation's
22 interests. First, as in *Diné*, the federal government's interest is in defending its
23 interpretation and application of the environmental laws Plaintiff cites and in
24 demonstrating that the standards articulated in the Administrative Procedure Act
25 have been met. See Complaint ¶5. That interest differs from the Nation's
26 sovereign interest in ensuring that water delivery to Tribal lands continues and that
27 the water delivery infrastructure currently in place remains for the Nation's
28 beneficial use. As in *Diné*, the federal defendants have no vested interest in the

1 outcome and practical implications of this lawsuit; they have no interest in water
2 delivery to Arrowhead Springs. The Nation, on the other hand, has a fundamental
3 interest in the immediate and continuing delivery of water because its governmental
4 operations, cultural practices, economic well-being, property, and personal safety
5 are at stake. As in *Diné*, here too the “Nation’s interest is tied to its very ability to
6 govern itself, sustain itself financially, and make decisions about its own natural
7 resources.” *Diné Citizens*, 932 F.3d at 857. The federal defendants do not share
8 these interests.

9 Defendants cannot adequately represent the Nation’s interests in this matter
10 not only because their interests diverge from those of the Nation, but also because
11 they will not make all of the Nation’s arguments, nor are they capable of doing so.
12 Indeed, the USFS and San Bernardino National Forest asserted several times in the
13 last year that they lack an adequate understanding of the Nation’s use of water on
14 the Arrowhead Springs property despite being told in detail, numerous times over
15 the last year, how the Nation uses its property and water. See A. Binney Dec. ¶¶13,
16 22, 24, 37, 39, 42 (RJN Ex. 7); D. Little Dec. ¶¶10-13 (RJN Ex. 5).

17 Furthermore, when USFS officials did purport to discuss the Nation’s need
18 for water, they got it wrong. The USFS “mischaracterized and misstated the
19 Nation’s need for water at Arrowhead Springs” when it alleged that there were “no
20 irrigated agricultural uses on the [Nation’s] property.” D. Little Dec. ¶11 (RJN Ex.
21 5). In fact, the Nation operates a Native plant propagation project there, *id.* ¶12(d),
22 and uses some of the subject water to irrigate fire-defensible green space
23 surrounding important facilities. See R. Garton Dec. ¶6 (RJN Ex. 4).

24 The USFS wrote that the “hotel and conference facility is not currently being
25 operated,” D. Little Dec. ¶11 (RJN Ex. 5), when in fact the Nation uses Arrowhead
26 Springs daily, including, for example, “by the government departments housed in
27 the administration building, the firefighters at the fire station, and the employees
28 who operate the events that are held throughout the property.” *Id.* ¶ 12(c).

1 Defendants have demonstrated their inability to retain and articulate the information
2 necessary to protect the Nation's interests and thus cannot adequately represent
3 these interests.

4 Moreover, in the last few months the federal defendants have acted in ways
5 that run directly counter to the Nation's interests, and there is no reason to believe
6 they will suddenly alter that practice. For example, although the federal
7 government has fiduciary obligations to protect tribal interests, the federal agencies
8 involved in this dispute never notified the Nation that it was in danger of losing its
9 water source at Arrowhead Springs. *See* D. Little Dec. ¶7 (RJN Ex. 5) ("The USFS
10 never notified the Nation of its Notice of Denial, before or after the notice issued").
11 This omission was patently adverse to the Nation's interests given that "agency
12 officials knew the Nation relied upon the water ... and used it for a variety of
13 purposes." *Id.* ¶8. Similarly, the federal defendants failed to meet with the Nation
14 or consult with its officials before issuing the Notice of Denial despite federal law
15 and policy requiring them to do so, and even while knowing the Notice of Denial
16 "would leave the Nation without water for Arrowhead Springs." A. Binney Dec.
17 ¶¶7, 10 (RJN Ex. 7).

18 Finally, the United States cannot adequately represent the Nation when it has
19 competing interests. *See Pit River Home & Agric. Coop. Ass'n*, 30 F.3d at 1101.
20 Here, the Nation seeks to ensure continued water delivery to Arrowhead Springs.
21 However, in another action in this Court, *BlueTriton Brands LLC v. USFS*, the
22 USFS is defending its denial of BlueTriton's and the Nation's access to the very
23 infrastructure the Nation is seeking to safeguard in this case. In their answer in
24 *BlueTriton Brands*, the federal defendants, including the USFS, "deny the
25 allegation ... that BlueTriton has any water rights sources on the San Bernardino
26 National Forest." *See BlueTriton Brands LLC v. USFS*, ECF 33, p.5, ¶¶11, 14. A
27 federal agency that presents a position that is adverse to the Nation's interests in
28 one lawsuit will never adequately represent and defend those same interests in a

1 different lawsuit.
2

3 **C. Joinder is Not Feasible Because the Nation Is a Federally Recognized**
4 **Tribe with Sovereign Immunity.**

5 Federally recognized Indian tribes are sovereign governments that may not
6 be sued absent an “express and unequivocal waiver of immunity by the tribe or
7 abrogation of tribal immunity by Congress.” *Dawavendewa*, 276 F.3d 1150 at
8 1159. It is “well established” in the Ninth Circuit that a tribe may intervene for the
9 limited purpose of asserting it is a required party without waiving its sovereign
10 immunity. *Maverick Gaming LLC v. United States*, 658 F. Supp. 3d 966, 974
11 (W.D. Wash. 2023) (citing *Klamath*, 48 F.4th at 942; *Diné*, 932 F.3d at 850), *aff’d*,
12 *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024).

13 Here, the Nation is a federally recognized tribe that has not waived and does
14 not now waive its sovereign immunity, and Congress has not abrogated that
15 immunity. *See* 89 Fed. Reg. 99899, 99902 (Dec. 11, 2024) (list of federally
16 recognized tribes). The burden of pleading and proving a waiver of tribal sovereign
17 immunity is on the Plaintiff SOFA. *See Miller v. Wright*, 705 F.3d 919, 923 (9th
18 Cir. 2013) (“the party asserting subject matter jurisdiction has the burden of
19 proving its existence”) (citing *Robinson v. United States*, 586 F.3d 683, 685 (9th
20 Cir. 2009)). *See also Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 685–
21 86 (8th Cir. 2011) (“The plaintiffs bear the burden of proving that either Congress
22 or Amerind has expressly and unequivocally waived tribal sovereign immunity”);
23 *Garcia v. Akwesasne Hous. Auth.*, 268 F.3d 76, 84 (2d Cir. 2001); *Welch v. United*
24 *States*, 409 F.3d 646, 651 (4th Cir. 2005). Plaintiff has not pled, and cannot prove,
25 a clear and unequivocal waiver or congressional abrogation of the Nation’s
26 sovereign immunity. Accordingly, the Nation cannot be joined to this action.
27
28

D. The Action Cannot Proceed in Equity and Good Conscience Absent the Nation as a Party Under FRCP 19(b).

The Court considers four factors when determining whether an action can proceed in equity and good conscience if a required party cannot be joined: “(i) potential prejudice, (ii) possibility to reduce prejudice, (iii) adequacy of a judgment without the required party, and (iv) adequacy of a remedy with dismissal.” *Maverick Gaming LLC*, 123 F.4th at 980 (quoting *Klamath*, 48 F.4th at 947 (citing FRCP 19(b))). Notably, “[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity.” *Id.* at 980 (quoting *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021)).

First, consideration of the potential prejudice to the absent party or the existing parties “largely duplicates the consideration that made a party necessary [now “required”] under Rule 19(a).” *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002)). As discussed above, the Nation has substantial interests in its riparian, appropriative, aboriginal, groundwater, and contractual water rights, as well as its sovereign governmental interests, property rights, and interests in the safety of its citizens and neighbors. SOFA seeks to enjoin the USFS from granting any third party, including the Nation, a SUP to operate BlueTriton’s infrastructure, and further, seeks removal of said infrastructure. Complaint, pp.34-36. If SOFA succeeds, water will no longer flow to Arrowhead Springs, and the prejudice to the Nation will be substantial.

Second, it is not possible to reduce the prejudice the Nation would suffer here. This factor too favors dismissal. SOFA seeks to immediately set aside the SUP that permits delivery of water to the Nation. It also seeks the immediate removal of the physical infrastructure that delivers water to the Property, including water transmission lines, pipelines, water collection tunnels, boreholes, wells, service trails, and more. *See* Complaint ¶69. These remedies would terminate the

1 Nation's water supply at Arrowhead Springs, causing the severe harms described
2 above.

3 There is no way this Court could shape relief to avoid prejudice here because
4 the Nation's interests and the Plaintiff's interests are mutually exclusive. The
5 Nation seeks to leave the physical water-delivery infrastructure in place, whereas
6 the Plaintiff seeks to remove it immediately. The Nation seeks to permit either
7 BlueTriton or a third party (including itself) to hold a SUP, whereas the Plaintiff
8 seeks to preclude *any* party from holding a SUP. The Nation requires water,
9 whereas the Plaintiff seeks to cut off the water flowing to Arrowhead Springs.
10 There is no way to reduce prejudice to the Nation.

11 Third, a judgment rendered without the Nation would be inadequate. This
12 "third Rule 19(b) factor – whether a judgment rendered without the absent party
13 would be adequate ... refers to the public stake in *settling disputes by wholes*,
14 whenever possible." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 870–71
15 (2008) (emphasis added) (quotations and citations omitted). As discussed above,
16 SOFA seeks to "enjoin defendant from approving or allowing any third party to
17 divert water from Strawberry Canyon" and requests an order requiring the USFS or
18 BlueTriton to remove all water delivery infrastructure within the SBNF.
19 Complaint, Prayer for Relief ¶¶5,7. However, such a judgment would be
20 inadequate because the Nation still has its riparian, appropriative, contractual, and
21 aboriginal water rights to water from the Strawberry Canyon watershed, as outlined
22 above.

23 Even if SOFA obtained a judgment against the USFS here, that judgment
24 necessarily could not bind the Nation in its absence. Thus, this "social interest in
25 the efficient administration of justice and the avoidance of multiple litigation is an
26 interest that has traditionally been thought to support compulsory joinder of absent
27 and potentially adverse claimants." *Republic of Philippines*, 553 U.S. at 870–71
28 (quotations and citations omitted). "Going forward with the action without the"

1 Nation’s joinder as a full party “would not further the public interest in settling the
2 dispute as a whole because the” Nation “would not be bound by the judgment”
3 *Id.*

4 Lastly, regarding the fourth factor, the Ninth Circuit has repeatedly
5 “recognized that a plaintiff’s interest in litigating a claim may be outweighed by a
6 tribe’s interest in maintaining its sovereign immunity.” *Kescoli*, 101 F.3d at 1312
7 (citing *Confederated Tribes v. Lujan*, 928 F.3d 1496, 1500 (9th Cir. 1991)). “If the
8 necessary party is immune from suit, there may be ‘very little need for balancing
9 Rule 19(b) factors because immunity itself may be viewed as the compelling
10 factor.’” *Id.* (emphasis added).

11 Indeed, there is a “wall of circuit authority requiring dismissal when a Native
12 American tribe cannot be joined due to its assertion of tribal sovereign immunity.”
13 *Maverick Gaming*, 123 F.4th at 971 (quotations omitted); see *Klamath*, 48 F.4th at
14 938; *Deschutes River*, 1 F.4th at 1163; *Am. Greyhound Racing, Inc.*, 305 F.3d at
15 1025 (“the tribes’ interest in maintaining their sovereign immunity outweighs the
16 plaintiffs’ interest in litigating their claims”). As the Ninth Circuit has observed,
17 “in *Lomayaktewa, Confederated Tribe, Shermoen, Pit River Home, Quileute Indian*
18 *Tribe, Kescoli*, and *Clinton*, we determined that the plaintiff would be without an
19 alternative forum to air his grievances. Nevertheless, in each case, we determined
20 that the absent Indian Tribe was indispensable and dismissed the case.”

21 *Dawavendewa*, 276 F.3d at 1162. The lack of an alternative forum does not
22 “prevent dismissal of a suit. Sovereign immunity may leave a party with no forum
23 for its claims.” *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 2004).
24 Here, the Nation’s sovereign immunity is the compelling factor favoring dismissal.

25 Note that some of the interests SOFA mentions in this lawsuit, namely the
26 interests of “downstream water rights holders,” Complaint ¶63, may be defended in
27 a state general stream adjudication. However, regardless of whether an alternative
28 forum exists, this case should be dismissed given the Nation’s sovereign immunity.

The Ninth Circuit has “‘regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs.’” *Diné*, 932 F.3d at 858 (quoting *Am. Greyhound Racing, Inc.*, 305 F.3d 1015); see *Dawavendewa*, 276 F.3d at 1162. “Mindful of the ‘wall of circuit authority’ in favor of dismissing an action where a tribe is a necessary party, we agree with the district court that this litigation cannot, in good conscience, continue in NTEC’s absence.” *Id.* (quoting *White v. University of California*, 765 F.3d 1010, 1028 (9th Cir. 2014)). The same result should obtain here.

IV. CONCLUSION

For these reasons, the Nation satisfies the requirements for a motion to dismiss SOFA's Complaint under Rules 12(b)(7) and 19, and respectfully requests that the Court dismiss this case with prejudice.

Dated: October 9, 2025

Respectfully submitted,
LAW OFFICE OF FRANK LAWRENCE

By: _____/S_____
Frank R. Lawrence
Law Office of Frank Lawrence
Counsel for Intervenor
Yuhaaviatam of San Manuel Nation

